

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 24, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP2556

Cir. Ct. No. 2015CV106

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CITIZENS COMMUNITY FEDERAL N.A.,

PLAINTIFF-RESPONDENT,

V.

LARRY L. WERNER,

DEFENDANT-APPELLANT,

JANE DOE WERNER, UNKNOWN SPOUSE OF LARRY L. WERNER,

DEFENDANT.

APPEAL from a judgment of the circuit court for Dunn County:
ROD W. SMELTZER, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Larry Werner, pro se, appeals a summary judgment of foreclosure in favor of Citizens Community Federal N.A. claiming the motion was untimely and his signatures on loan documents were forged. We affirm.

¶2 Werner executed a note and a mortgage naming Citizens as lender. Citizens commenced an action for foreclosure and sale of the mortgaged premises under the terms of the note and the mortgage. The circuit court granted summary judgment and entered a judgment of foreclosure. The court denied a motion to set aside or vacate the judgment. Werner now appeals.

¶3 We review summary judgments independently, utilizing the same methodology as the circuit court. *Green Spring Farms v. Kersten*, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment is appropriate when there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).¹

¶4 Werner argues Citizens' summary judgment motion was untimely because it was not served at least twenty days before the time fixed for the hearing. *See* WIS. STAT. § 802.08(2). However, service of the motion was completed upon mailing, pursuant to WIS. STAT. § 801.14(2). The motion was heard approximately thirty days after service and filing of the motion. The motion was timely.

¶5 The record demonstrates Citizens submitted sufficient documentary evidence to support a prima facie case for summary judgment. As holder of the

¹ References to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

note and the mortgage, Citizens had a legal interest in the secured debt and standing to pursue the remedy of foreclosure. *See* WIS. STAT. § 403.301. To establish the default, Citizens submitted affidavits in support of summary judgment establishing Werner failed to timely make payments on the note and failed to pay the real estate property taxes when due. The amount of the delinquency was proven by the payment history ledger and tax reports showing delinquent taxes for 2013-14. The averments in the affidavits were also sufficient to establish the affiants had the requisite personal knowledge and were qualified to testify as to the default, payment history, and other information. WIS. STAT. § 908.03(6); *see also Palisades Collection LLC v. Kalal*, 2010 WI App 38, ¶13, 324 Wis. 2d 180, 781 N.W.2d 503.

¶6 When a motion for summary judgment is properly supported, an adverse party may not rest upon mere allegations or denials, but is required by affidavit or otherwise to set forth specific facts showing a genuine issue for trial. *Green Spring Farms*, 136 Wis. 2d at 315. Werner failed to present evidence to rebut the affidavits in support of summary judgment. In fact, at the summary judgment motion hearing, Werner admitted making payments on the note from its origination in 2009 until he defaulted in 2015. Werner conceded the property taxes had not been paid and admitted he had no evidence the note was not in default, or that the property taxes had been paid.

¶7 Werner claims his signatures on the note and mortgage were forged. However, Werner failed to present any evidence to create a material question of fact on this issue. Citizens' loan officer averred he witnessed and notarized Werner's signature on no fewer than ten loan documents at the loan closing. Werner's identity was also verified at the closing by examining and taking a

photograph of Werner's driver's license and at the summary judgment motion hearing, Werner acknowledged his signature on copies of the loan documents.

¶8 Werner insists he was coerced and intimidated into false testimony at the motion hearing. The record belies Werner's contentions. The circuit court stated it had reviewed the court file and "unless you can tell me more, I'd have to agree with [Citizens] on this." The court indicated it was "going to take some quick testimony relating to this summary judgment from you" The explicit purpose of the testimony was to provide Werner an opportunity to produce evidence precluding summary judgment. Werner failed to present evidence of disputed issues of material fact. Citizens was entitled to judgment as a matter of law.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

